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May 15, 2012

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

39 May 15, 2012

Sachi A. Hamai

SACHI A. HAMAI
EXECUTIVE OFFICER



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The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL TO TERMINATE 15 AGREEMENTS FOR THE EXAMINATION OF APPLICANTS FOR
MASSAGE AND ACUPRESSURE TECHNICIAN PERMITS AND/OR MASSAGE
ESTABLISHMENT INSPECTION SERVICES EFFECTIVE JUNE 30, 2012 AND EXECUTE EIGHT
NEW MASSAGE ESTABLISHMENT INSPECTION SERVICES AGREEMENTS EFFECTIVE JULY
1, 2012 THROUGH JUNE 30, 2017
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Request approval to terminate 15 agreements for the Examination of Applicants for Massage and Acupressure Technician Permits (Examination Services) and/or Massage Establishment Inspection Services (Inspection Services); execute eight new agreements for Inspection Services with various cities; and delegate authority to execute future agreements for Inspection Services with additional cities.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Director of the Department of Public Health (DPH), or his designee, to terminate 15 agreements, effective June 30, 2012, as follows:

- Seven agreements for Examination Services with the cities of Bell Gardens, Burbank, Culver City, El Segundo, Gardena, Los Angeles, and Torrance;
- Six agreements for Inspection Services with the cities of Bell Gardens, Burbank, Culver City, El Segundo, Los Angeles, and Torrance; and
- Two agreements for both Inspection Services and Examination Services with the cities of Commerce and Rancho Palos Verdes.

2. Approve and instruct the Director of DPH, or his designee, to execute eight new agreements for Inspection Services, substantially similar to Exhibit 1, to allow DPH's Environmental Health Division to continue to provide health and sanitation inspections of massage establishments for the cities of Bell Gardens; Burbank; Commerce; Culver City; El Segundo; Los Angeles; Rancho Palos Verdes; and Torrance, effective July 1, 2012 through June 30, 2017, to be 100 percent offset by inspection fees as approved by your Board on August 2, 2011, and collected by the cities and paid to DPH, at no net County cost.

3. Delegate authority to the Director of DPH, or his designee, to enter into future agreements with additional cities for Inspection Services, to be effective from the date of execution through June 30, 2017, subject to review and approval as to form by County Counsel, and notification to your Board and the Chief Executive Office.

4. Delegate authority to the Director of DPH, or his designee, to execute amendments to the above-referenced agreements to: a) adjust the fees as adopted by your Board through ordinance changes, and b) revise or incorporate provisions consistent with applicable State and/or federal law and regulations, County ordinances, and Board policy, subject to review and approval as to form by County Counsel, and notification to your Board and the Chief Executive Office.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of Recommendation 1 will allow DPH to terminate 15 agreements with cities located in the County for Examination Services and Inspection Services of massage establishments. This Recommendation is based on changes to State law which have resulted in a significant decrease in the need for cities to retain DPH to conduct Examination Services. Additionally, approval of Recommendation 1 will allow DPH to terminate Inspection Services agreements that were originally executed through the Department of Health Services (DHS) but are currently maintained by DPH. This action and approval of Recommendation 2 will enable DPH to update the agreements and contract with the cities directly. As required under the agreements, DPH will send advance written notice of termination to the affected cities.

Approval of Recommendation 2 will allow DPH to establish new agreements with updated terms, provisions, and fees for Inspection Services. While cities located within the County may conduct their own Inspection Services, cities can contract with DPH for these services. The following eight cities have requested DPH to provide these services: Bell Gardens, Burbank, Commerce, Culver City, El Segundo, Los Angeles, Rancho Palos Verdes, and Torrance.

Approval of Recommendation 3 will allow the Director of DPH to execute future agreements with additional cities that request Inspection Services without undue delay, thereby allowing DPH to commence services promptly.

Approval of Recommendation 4 will allow the Director of DPH to execute amendments to the agreements to adjust the fees and update provisions consistent with all applicable State, federal, and local laws and regulations.

Implementation of Strategic Plan Goals

The recommended actions support Goal 3, Integrated Services Delivery, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

All costs for services will be offset by inspection fees as set by DPH and approved by the Auditor-Controller as to reasonableness. Fees are collected and paid by the cities to DPH, at no net County cost. The current fee per inspection approved by your Board on August 2, 2011 is \$175. In addition to the inspection fee, a Liability Trust Fund (LTF) liability surcharge fee of four percent is added to the base fee. The LTF is a trust account funded by contract cities to reimburse the County for costs related to litigation that results from contract city operations. Effective, January 1, 2010, contract cities pay four percent surcharge into the LTF for their individual contract expense. Therefore, the total fee paid by the cities to the County will be \$182 for each inspection, including up to two subsequent re-inspections within sixty calendar days, if needed, from the date of the original inspection. Any additional inspections or reinspections the city may request will result in a new fee charge of \$182 for each inspection. Future fee adjustments may be recommended to your Board for approval.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Currently, DPH maintains 15 agreements with cities: seven agreements for Examination Services; six agreements for Inspection Services; and two agreements for both Examination Services and Inspection Services.

Examination Services Agreements

On September 1, 2009, the State of California enacted Senate Bill 731, which created the California Massage Therapy Council (CAMTC). The CAMTC is a non-profit organization authorized to create and implement voluntary certification for the massage therapy profession that will enable consumers to easily identify credible Certified Massage Therapists (CMTs) and Certified Massage Practitioners (CMPs). The law also prevents local governments from requiring a person certified by the CAMTC to obtain any other type of license or certificate to perform massage services. As a result, the number of applicants seeking massage certification from DPH has significantly decreased (by 98%). Based on the decrease in need, DPH is recommending terminating all Examination Services agreements with the cities, effective June 30, 2012. DPH does not currently have authority to terminate or amend the agreements and therefore is seeking your Board's approval.

Inspection Services Agreements

The Treasurer and Tax Collector has requested that DPH conduct Inspections Services for massage establishments within the unincorporated areas of the County. While cities located within the County may conduct their own inspection services, cities may request to contract with DPH to provide these services.

The Inspection Services agreements were originally executed through DHS and are currently maintained by DPH. In an effort to update the contracts, DPH is recommending terminating all six agreements and reissuing new agreements. In addition, DPH will terminate the two combination agreements for Examination Services and Inspection Services and issue new and updated agreements for Inspection Services only. As required under the current agreements, DPH will send advance written notice of termination to the affected cities.

County Counsel has reviewed and approved the agreement (Exhibit I) as to form.

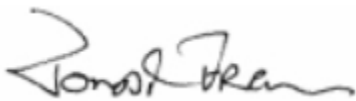
CONTRACTING PROCESS

For over thirty years, the County has contracted with cities located within the County to provide for Examination Services and Inspection Services for massage establishments. These agreements are executed by the request of the cities. The actions recommended in this Board letter will terminate the existing 15 agreements and establish eight new agreements. It is also recommended that DPH be delegated authority to enter into future agreements with additional cities requesting Inspection Services.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommended actions will allow DPH to continue to provide health and sanitation inspection of massage establishments, contributing to its overall goal of preserving and protecting public health and safety.

Respectfully submitted,



JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

JEF:acv

Enclosures

c: Chief Executive Officer
Acting County Counsel
Executive Officer, Board of Supervisors

Contract No. _____

MASSAGE ESTABLISHMENT INSPECTION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between

COUNTY OF LOS ANGELES (hereafter "County"),

and

THE CITY OF _____ (hereafter "City").

WHEREAS, the California Health and Safety Code provides that the governing bodies of counties and cities shall take measures as may be necessary to preserve and protect the public's health and safety, including the adoption of ordinances and establishment of fees to support the enforcement of such activities; and

WHEREAS, County's Board of Supervisors has delegated the authority and responsibility for these measures to County's Director of Public Health, or his/her authorized designee (hereafter referred to as "Director"); and

WHEREAS, Director has entrusted his/her Department of Public Health ("DPH") Director of Environmental Health to preserve and protect the public's health and safety by inspecting businesses, including but not limited to, the inspection of massage establishments for health and safety purposes throughout the County of Los Angeles; and

WHEREAS, City has amended its City Municipal Code, as of _____, to adopt Section _____, for the purposes of regulating massage establishments within the City's corporate limits; and

WHEREAS, the City's purpose in amending its Municipal Code as described above, is to allow for inspections as related to massage establishments and to further ensure that each massage establishment operating within City's corporate limits are in compliance with all applicable health and safety laws; and

WHEREAS, City wishes to contract with County for the performance of such inspections and /or other hereafter described public health and safety inspection service within its corporate limits by County through its DPH.

NOW, THEREFORE, the parties hereto agree as follows:

1. TERM: This Agreement shall become effective July 1, 2012 by the County's Board of Supervisors, and shall continue in full force and effect to June 30, 2017.

Notwithstanding the provisions of this Paragraph as set forth herein, this Agreement may be cancelled or terminated at any time by either party, with or without cause, upon the giving of at least thirty (30) calendar days' advance written notice to the other party.

2. DESCRIPTION OF THE DUTIES AND UNDERSTANDINGS BETWEEN PARTIES:

A. County agrees to provide inspection of massage establishments within the corporate limits of City to the extent and in the matter hereafter set forth.

Such services shall only encompass duties and functions of the types customarily rendered by DPH under the charter of County and the statutes of the State of California.

B. Except for the completion time limits as described in Paragraph C, hereinbelow, the rendition of all services performed hereunder, the standard of performance and other matters incidental to the performance of such services, and the control of personnel so employed, shall remain in County. In the event of dispute between the parties as to the extent of the duties and functions to be rendered hereunder, or the manner of performance of such services, Director shall determine the duties, functions, and services to be rendered.

County agrees to perform for City such public health and safety services as are authorized by Section 480 et seq. of the California Health and Safety Code 101375, and as required by City in its enforcement of its City Municipal Code (as it relates to City's adoption of Section _____, as they now exist or may hereafter be amended), and/or other City ordinances relating to public health and safety, (all hereafter collectively referred to herein as "City's Municipal Code", unless otherwise stated).

C. County through its DPH, agrees to perform massage inspection services as follows:

(1) Massage Establishment Inspection Services:

a. Upon notification from City

_____ that a party (i.e., applicant) has applied for a new application for a massage establishment permit within City's corporate limits, or for an application for the renewal of any such permit, the County's DPH shall inspect the premises sought to be licensed by said applicant, within twenty (20) calendar days, to ascertain if the applicant's premises is/are in compliance with all applicable health and safety provisions of the laws of the State of California and that ordinances of City and County are being met. Such inspections shall include but are not limited to, all health and safety related provisions set forth in City's Municipal Code. County's DPH shall issue a written notification to City's _____ stating whether or not applicant's premises is/are in compliance within an additional ten (10) calendar days. County's written notification of applicant's premises not being in compliance shall set forth the applicant's deficiencies and County shall be required to re-inspect the premises no more than twice during the next sixty (60) calendar day time period, when so requested by applicant in writing. If a written notification of compliance is not received by the City's _____ from County's

DPH within (90) calendar days of the applicant's date of filing the application, or upon DPH having received written notice by the City's _____ of applicant's application, whichever is greater, and City _____ must re-notify County's DPH to inspect applicant's premises, then any such additional inspection shall require a new application and be subject to the inspection fee as set forth in Paragraph H, hereinbelow.

b. County's DPH shall within its discretion from time to time, but no less than every three hundred sixty five (365) days from the date of the DPH's issuance of an applicant's written notification of compliance (i.e., compliance letter), make an inspection of each complying massage establishment located within the City's corporate limits, for purposes of determining that all applicable health and safety provisions of the law of the State of California and ordinances of the City and County are met. Such inspections shall include, but not be limited to all health and safety related provisions set forth in the City's Municipal Code. County's DPH shall notify the City's _____ of any violation of applicable statutes, ordinances, rules, and/or regulations which any permittee has failed to correct within

the (30) calendar days after the notification of the violation has been given to the permittee by the County's DPH.

(2) For purposes of performing said functions, County shall furnish and supply all equipment, labor, supervision, and supplies, necessary to provide the level of service to be rendered hereunder.

Notwithstanding anything hereinbefore contained, it is agreed that in all instances wherein additional forms, stationery notices, supplies, and the like, must be issued in the name of the City, the same shall be supplied by the City at its sole cost and expense.

D. City in order to facilitate the performance of services herein, shall:

(1) Agree that the County shall have full and timely cooperation and assistance from the City, its officers, employees, and agents.

Prior to performance by County of services pursuant to this Agreement, City shall provide to County a written list of the inspection of massage establishment services, or public health and safety services, which it requests County to perform and the State and local public health and safety regulations which it requests County to enforce. Any changes in service(s) requested by City should be in writing, and delivered to County thirty (30) calendar days prior to the requested change.

(2) Provide prompt written notifications to the County's DPH upon the filing of any application for a new massage establishment permit or application for the renewal of any such permit, within City's corporate limits.

E. All persons employed in the performance of such duties, functions, and services, for City shall be County employees and no City employee shall be taken over by County, and no person employed hereunder shall have City pension, civil service, or any status or right, except as otherwise expressed in this Agreement.

For purposes of performing such duties, functions, and services, and for purposes of giving official status to the performance thereof where necessary, every County officer or employee engaged in the performance of any service hereunder shall be deemed to be an officer or employee of City while performing services for City, which services are within the scope of this Agreement.

F. City shall not be called upon to assume any liability for the direct payment of any salaries, wages, or other compensation for any County personnel performing services hereunder for County, or any liability other than that provided for under this Agreement.

Except as herein otherwise specified, City shall not be liable for compensation or indemnity to any County employees for injury or sickness arising out of his/her employment.

G. Indemnification:

(1) County will indemnify, defend and hold harmless City, its elected and appointed officers, and employees from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses, arising from or connected with County's negligent acts and/or omissions arising from this Agreement and/or relating to this Agreement. County will not be obligated to indemnify, defend and hold harmless City from City's negligent acts and/or omissions relating to this Agreement.

(2) City will indemnify, defend and hold harmless County, its elected and appointed officers, and employees from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses, arising from or connected with City's negligent acts and/or omissions arising from this Agreement and/or relating to this Agreement. City will not be obligated to indemnify, defend and hold harmless County from County's negligent acts and/or omissions relating to this Agreement.

H. Payment by City to County for Services Performed:

City shall pay the cost for County's provision of massage inspection services and/or the enforcement of City's Municipal Code and other applicable health and safety laws as follows:

A rate or fee for the inspection of massage establishments of One Hundred Seventy Five Dollars (\$175.00) for each inspection. An additional 4% City Liability fee will be added to the base fee for a total of

\$182. This rate/fee shall include the cost of up to two subsequent re-inspections of massage establishments previously cited by the County for deficiencies and the costs of all written notices, except for as to be provided for under Paragraph 2, Description of the Duties and Understandings between the Parties, subparagraph C(2), hereinabove.

City agrees that such rate/fee as described herein, shall be determined by DPH and County's Auditor-Controller in accordance with the policies and procedures established by the Board of Supervisors. Further, the foregoing rate/fee shall be adjusted by DPH and County's Auditor-Controller each fiscal year to reflect the costs of such service in accordance with the policies and procedures for the determination of such rate as adopted by the Board of Supervisors. County shall transmit such adjusted rate/fee for the next fiscal year to the City's City Council by no later than April 1st of each fiscal year, for rate/fee to be effective the following July 1st.

Unless the City's City Council exercises its right to cancel this Agreement pursuant to Paragraph 1, Term, hereinabove, the rate/fee shall be applicable for the ensuing fiscal year.

I. Payment by the City to County for services performed by County's DPH shall be rendered by City quarterly, upon presentation of a County invoice, in duplicate, for all massage inspection services performed during the previous quarter. Such invoices shall be approved by an authorized representative of the City's _____ and

processed for payment no later than twenty (20) calendar days subsequent to presentation.

If such payment is not delivered to County office which is described on said invoice within thirty (30) calendar days after the date of invoice, County is entitled to recover interest thereon. Said interest shall be at the rate of five percent (5%) per annum of any overdue portion calculated from the last day of the month in which the services were performed.

3. CONSTRUCTION: To the extent there are any rights, duties, obligations, or responsibilities enumerated in the recitals or otherwise in this Agreement, they shall be deemed a part of the operative provisions of this Agreement and shall be fully binding upon the parties.

4. ALTERATION OF TERMS: The body of this Agreement, fully expresses all understandings of the parties concerning all matters covered and shall constitute the total Agreement. No addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, employees, or agents, shall be valid and effective unless made in the form of a written amendment to this Agreement which is formally approved and executed by both parties, as authorized by the Board of Supervisors.

This Agreement may be amended by the County to incorporate fee changes as recommended by DPH and County's Auditor-Controller and approved by the County's Board of Supervisors. Such amendment shall be formally executed by both parties.

The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Agreement shall be prepared and executed by the Contractor and by the Director.

5. WAIVER: No waiver of any breach of any provision of this Agreement by County shall constitute a waiver of any other breach of such provision. Failure of County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

6. SEVERABILITY: If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

7. CITY'S OFFICES: City's office is located at _____ . City's business telephone number is _____ and facsimile/FAX number is _____ . City shall notify County, in writing, of any changes made to its business address, business telephone number and/or facsimile/FAX number as listed herein, or any other business address, business telephone number and/or facsimile/FAX

number used in the provision of services herein, at least ten (10) calendar days prior to the effective date(s) thereof.

8. NOTICES: Notices hereunder shall be in writing and may either be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, attention to the parties at the addresses listed below. Director is authorized to execute all notices or demands which are required or permitted by County under this Agreement. Addresses and parties to be notified may be changed by providing at least ten (10) working days' prior written notice to the other party.

A. Notices to County shall be addressed as follows:

- (1) Department of Public Health
Environmental Health – Administrative Headquarters
5050 Commerce Drive
Baldwin Park, CA 91706
Attention: Director, Environmental Health
- (2) Department of Public Health
Contracts and Grants Division
313 N. Figueroa Street, 6th Floor-West
Los Angeles, CA 90012
Attention: Division Chief

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B. Notices to City shall be addressed as follows:

City of _____

City Department

Street Address

City, CA ZIP Code

Attention: _____

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IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be subscribed on its behalf by its Director, and Contractor has caused this Amendment to be subscribed on its behalf by its duly authorized officer, on the day, month, and year first above written.

COUNTY OF LOS ANGELES

By _____
Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer

Contractor

By _____
Signature

Print Name

Title _____
(AFFIX CORPORATE SEAL)

APPROVED AS TO FORM
BY THE OFFICE OF THE COUNTY COUNSEL
John F. Krattli
Acting County Counsel

APPROVED AS TO CONTRACT
ADMINISTRATION:

Department of Public Health

By _____
Patricia Gibson, Chief
Contracts and Grants Division